

AMENDED IN SENATE APRIL 9, 2007

AMENDED IN SENATE JANUARY 4, 2007

SENATE BILL

No. 24

Introduced by Senator Torlakson

December 4, 2006

~~An act to add Article 4 (commencing with Section 30133) to Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, relating to taxation. An act to add Chapter 7.5 (commencing with Section 105435.10) to Part 5 of Division 103 of the Health and Safety Code, and to amend Sections 6011 and 6012 of the Revenue and Taxation Code, relating to cigarettes and tobacco smoke.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 24, as amended, Torlakson. ~~Taxes: cigarette and tobacco products. Tobacco product environmental smoke: fee.~~

(1) Under existing law, the State Department of Public Health is required to administer a variety of programs related to public health, including programs related to cigarette and tobacco-related health problems and programs relating to indoor air quality.

This bill would enact the Cigarette and Tobacco Products Emissions Act of 2007, which would require the department to assess a fee, administered and collected by the State Board of Equalization, on consumers of cigars and cigarettes, as defined, to mitigate the harmful effects caused by environmental tobacco smoke created by the use of cigars and cigarettes by those consumers.

This bill would establish the Cigarette and Tobacco Products Emissions Fund into which the fees would be deposited, other than an amount necessary to cover the costs of assurance of collection by the board. The fund would be used by the department, upon

appropriation by the legislature, for specified purposes. The bill would give the department broad regulatory authority to fully implement and effectuate the purposes of the bill and its various programs to address the health impacts of environmental tobacco smoke on children and others. The bill would require that those programs be implemented only to the extent the fee revenues are available for expenditure for those programs. This bill also makes findings and declarations regarding the health impact of environmental tobacco smoke.

(2) The Sales and Use Tax Law imposes a state sales and use tax on the gross receipts from the sale of tangible personal property sold at retail in this state or on the sales price of tangible personal property purchased from a retailer for the storage, use, or other consumption of that property in this state by the purchaser.

This bill would provide, for purposes of that law, that the terms “sales price” and “gross receipts” do not include the amount of any fee assessed by the State Department of Public Health under the Cigarette and Tobacco Products Emissions Act of 2007.

Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are automatically incorporated into the local taxes.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

The Cigarette and Tobacco Products Tax Law imposes a tax on every distributor of cigarettes and tobacco products at specified rates, including additional taxes imposed under the Tobacco Tax and Health Protection Act of 1988 (Proposition 99), and the California Families and Children Act of 1998 (Proposition 10).

This bill would, commencing January 1, 2008, impose an additional tax on the distribution of cigarettes at the rate of \$0.095 for each cigarette distributed. This bill would require the revenues collected from these additional taxes to be deposited in the General Fund, which shall be used, upon appropriation, for children’s health related purposes and smoking cessation programs, as determined by the Legislature.

~~By imposing a new tax, this bill would result in a change in state taxes for the purpose of increasing revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. *The Legislature finds and declares all of the*
- 2 *following:*
- 3 (a) *Poor air quality is a health threat to everyone within the*
- 4 *state.*
- 5 (b) *California has addressed poor air quality by a variety of*
- 6 *programs and requirements, including the regulation of harmful*
- 7 *emissions and the implementation of programs that encourage*
- 8 *activities to reduce harmful emissions and increase air quality for*
- 9 *residents of the state.*
- 10 (c) *Programs like Spare the Air promote behaviors to improve*
- 11 *air quality to protect the health of residents of the state. Programs*
- 12 *like the Katz Safe Schoolbus Clean Fuel Efficiency Demonstration*
- 13 *Program provide for the purchase of new schoolbuses that meet*
- 14 *federal safety standards and operate with greater efficiency and*
- 15 *produce fewer adverse air emissions than the vehicles being*
- 16 *replaced. The California Air Toxics Program establishes the*
- 17 *process for the identification and control of toxic air contaminants*
- 18 *and includes provisions to make the public aware of significant*
- 19 *toxic exposures and for reducing risk. Combined, these provisions*
- 20 *are some of this nation's most successful for providing public*
- 21 *health protection from air toxics.*
- 22 (d) *California requires control measures for pesticides designed*
- 23 *to reduce emissions sufficiently so that the source will not expose*
- 24 *the public to the levels of exposure which may cause or contribute*
- 25 *to significant adverse health effects. California's Smoke*
- 26 *Management Program addresses potentially harmful smoke*
- 27 *impacts from agricultural, forest, and range land management*
- 28 *burning operations.*
- 29 (e) *Although California addresses many types of emissions into*
- 30 *the air that negatively impact the health and well-being of residents*

1 of this state, it has not adequately addressed a major source of
2 harmful emissions: “second hand smoke” or “environmental
3 tobacco smoke.”

4 (f) Environmental tobacco smoke is a complex mixture of gases
5 and particles that includes smoke from burning cigarettes, cigars,
6 and pipes and exhaled smoke from those cigarettes, cigars, and
7 pipes. Environmental tobacco smoke contains at least 250
8 chemicals known to be toxic, including more than 50 that can
9 cause cancer. Environmental tobacco smoke has been classified
10 by the federal Environmental Protection Agency as a known cause
11 of cancer in humans.

12 (g) Breathing in environmental tobacco smoke has immediate
13 harmful effects on the cardiovascular system, and there is no
14 risk-free level of environmental tobacco smoke exposure. Even
15 brief exposure can be dangerous and can cause blood platelets to
16 become stickier, damage the lining of blood vessels, and decrease
17 coronary flow velocity reserves.

18 (h) Given the harms caused by environmental tobacco smoke
19 to the health and well-being of the residents of California, the
20 Legislature recognizes the need to mitigate those harms by creating
21 programs to reduce and prevent environmental tobacco smoke
22 and to research and cure environmental tobacco smoke-related
23 health problems.

24 SEC. 2. Chapter 7.5 (commencing with Section 105435.10) is
25 added to Part 5 of Division 103 of the Health and Safety Code, to
26 read:

27
28 CHAPTER 7.5 THE CIGARETTE AND TOBACCO PRODUCTS
29 EMISSIONS ACT OF 2007
30

31 105435.10. This chapter shall be known, and may be cited, as
32 the Cigarette and Tobacco Products Emissions Act of 2007.

33 105435.15. For purposes of this chapter, the following terms
34 have the following meanings:

35 (a) “Board” means the State Board of Equalization.

36 (b) “Cigar” means any roll of tobacco wrapped in leaf tobacco
37 or in any substance containing tobacco, but shall not include any
38 roll of tobacco wrapped in any substance which, because of its
39 appearance, the type of tobacco used in the filler, or its packaging

1 *and labeling, is likely to be offered to, or purchased by, consumers*
2 *as a cigarette.*

3 (c) *“Cigarette” means any product that contains nicotine, is*
4 *intended to be burned or heated under ordinary conditions of use,*
5 *and consists of or contains (1) any roll of tobacco wrapped in*
6 *paper or in any substance not containing tobacco; (2) tobacco, in*
7 *any form, that is functional in the product, which because of its*
8 *appearance, the type of tobacco used in the filler, or its packaging*
9 *and labeling, is likely to be offered to, or purchased by, consumers*
10 *as a cigarette; (3) any roll of tobacco wrapped in any substance*
11 *containing tobacco which, because of its appearance, the type of*
12 *tobacco used in the filler, or its packaging and labeling, is likely*
13 *to be offered to, or purchased by, consumers as a cigarette*
14 *described in this section; (4) or “roll-your-own” tobacco, meaning*
15 *any tobacco which, because of its appearance, type, packaging,*
16 *or labeling is suitable for use and likely to be offered to, or*
17 *purchased by, consumers as tobacco for making cigarettes or for*
18 *use in a pipe. For purposes of this definition of “cigarette,” 0.09*
19 *ounces of “roll-your-own” or “pipe-fill” tobacco shall constitute*
20 *one individual “cigarette.”*

21 (d) *“Consumer” means any person who purchases cigars or*
22 *cigarettes.*

23 (e) *“Department” means the State Department of Public Health*
24 *or its successor.*

25 (f) *“Environmental tobacco smoke” means the mixture of gases*
26 *and particles caused by the burning of cigars or cigarettes,*
27 *including, but not limited to, the burning of tobacco within a pipe,*
28 *or the mixture of gases and particles that escape into the air, when*
29 *one is smoking, or that are exhaled by a person smoking a cigar,*
30 *cigarette, or pipe.*

31 (g) *“Fund” means the Cigarette and Tobacco Products*
32 *Emissions Fund.*

33 (h) *“Retailer” includes a seller who makes a retail sale of*
34 *cigarettes or cigars, and every person engaged in the business of*
35 *making retail sales of cigarettes or cigars.*

36 (i) *“Tobacco cessation services” means the provision of medical*
37 *referral, telephone counseling, and nicotine replacement and*
38 *antidepressant pharmaceutical products through qualified*
39 *providers.*

1 105435.20. (a) *There is hereby imposed a fee on consumers*
2 *of cigars and cigarettes who are engaged in the emission of*
3 *environmental tobacco smoke by the purchase and use of cigars*
4 *and cigarettes.*

5 (b) *By _____, the department shall adopt regulations to establish*
6 *specific fees per cigar and cigarette to be assessed on consumers*
7 *who are engaged in the emission of environmental tobacco smoke*
8 *by the purchase and use of cigars or cigarettes. To the maximum*
9 *extent practicable, the fees shall be assessed on the basis of both*
10 *of the following criteria:*

11 (1) *The amount of cigars and cigarettes purchased by consumers*
12 *as it relates to the amount of environmental tobacco smoke created*
13 *by their use.*

14 (2) *The estimated amount of environmental tobacco smoke to*
15 *be generated by a consumer igniting and consuming the cigar or*
16 *cigarette and its relation to the total environmental problem*
17 *generated by cigar and cigarette smokers.*

18 (c) *This section shall not apply to, and no fee shall be assessed*
19 *upon, any retailer, manufacturer, distributor, or wholesaler of*
20 *cigars or cigarettes.*

21 (d) *The fee shall be collected by a retailer of cigars or cigarettes*
22 *at the time of purchase. The fee assessment in subdivision (a) shall*
23 *be adjusted annually by the department to reflect all of the*
24 *following:*

25 (1) *Any changes to the amount of environmental tobacco smoke*
26 *emitted by a cigar or cigarette by its use by the consumer or any*
27 *changes in the total amount of cigars and cigarettes sold within*
28 *the state.*

29 (2) *The administrative costs to the department to implement this*
30 *chapter.*

31 (3) *The increase in the annual average of the California*
32 *Consumers Price Index, as recorded by the California Department*
33 *of Industrial Relations, for the most recent year available.*

34 (e) *The fee imposed pursuant to this section shall be*
35 *administered and collected by the board in the same manner that*
36 *taxes are administered and collected under the Sale and Use Tax*
37 *Law (Part 1 (commencing with Section 6001) of Division 2 of the*
38 *Revenue and Taxation Code). The fees shall be deposited in the*
39 *Cigarette and Tobacco Products Emissions Fund.*

1 (f) *The fees collected pursuant to this section and the earnings*
2 *therefrom shall be used solely for the purposes of implementing*
3 *this chapter. The fees shall not exceed the amount reasonably*
4 *anticipated by the department to fully implement this chapter. The*
5 *department shall not spend more than it collects from the fees and*
6 *the earnings in implementing this chapter. In no fiscal year shall*
7 *the department collect more than _____ in fees, as adjusted for*
8 *inflation pursuant to subdivision (d).*

9 105435.25. (a) *The department shall have broad regulatory*
10 *authority to fully implement and effectuate the purposes of this*
11 *chapter.*

12 (b) *For calendar years beginning on and after January 1, 2009,*
13 *the department shall annually report to the Legislature on the*
14 *effectiveness of the programs funded pursuant to this chapter. The*
15 *report shall include, but shall not be limited to, recommendations*
16 *for improvements to those programs.*

17 105435.30. (a) *The Cigarette and Tobacco Products Emissions*
18 *Fund is hereby established in the State Treasury. The board shall*
19 *deduct the costs of administering the fee before transmitting the*
20 *money collected as fees, pursuant to Section 105435.20, to the*
21 *fund. Moneys in the fund shall, upon appropriation by the*
22 *Legislature, be available to the department for the following*
23 *purposes:*

24 (1) *To conduct a study on the health impacts of environmental*
25 *tobacco smoke on cigarette and cigar smokers and nonsmokers.*

26 (2) *To provide cigarette and cigar smokers with no-cost access*
27 *to tobacco cessation services consistent with United States Public*
28 *Health Service clinical guidelines and United States Department*
29 *of Health and Human Services guidelines for treating tobacco*
30 *dependence in order to reduce emissions of environmental tobacco*
31 *smoke.*

32 (3) *To provide education and information to schools, community*
33 *organizations, and local agencies regarding the health impacts of*
34 *environmental tobacco smoke, available tobacco cessation*
35 *programs, and strategies for smokers and nonsmokers to effectively*
36 *avoid or mitigate the negative health impacts of environmental*
37 *tobacco smoke.*

38 (4) *To support research efforts related to the prevention, causes,*
39 *and treatment of environmental tobacco smoke-related diseases.*

1 (5) *To produce and implement an ongoing public awareness of*
2 *environmental tobacco smoke-related diseases by developing an*
3 *information campaign using a variety of media approaches*
4 *including information on, but not limited to, the impacts of*
5 *environmental tobacco smoke on children and the increased*
6 *likelihood of children to become smokers when introduced to*
7 *environmental tobacco smoke by parents.*

8 (6) *To fund health programs to combat the impact of*
9 *environmental tobacco smoke on children including, but not limited*
10 *to, programs located on elementary, middle schools, junior high,*
11 *and high school campuses.*

12 (7) *To produce an annual report to the Legislature pursuant to*
13 *subdivision (b) of Section 105435.25.*

14 (b) *Notwithstanding Section 16305.7 of the Government Code,*
15 *all interest earned on the moneys that have been deposited into*
16 *the Cigarette and Tobacco Products Emissions Fund shall be*
17 *retained in that fund.*

18 SEC. 3. *Section 6011 of the Revenue and Taxation Code is*
19 *amended to read:*

20 6011. (a) “Sales price” means the total amount for which
21 tangible personal property is sold or leased or rented, as the case
22 may be, valued in money, whether paid in money or otherwise,
23 without any deduction on account of any of the following:

- 24 (1) The cost of the property sold.
25 (2) The cost of materials used, labor or service cost, interest
26 charged, losses, or any other expenses.
27 (3) The cost of transportation of the property, except as excluded
28 by other provisions of this section.

29 (b) The total amount for which the property is sold or leased or
30 rented includes all of the following:

- 31 (1) Any services that are a part of the sale.
32 (2) Any amount for which credit is given to the purchaser by
33 the seller.
34 (3) The amount of any tax imposed by the United States upon
35 producers and importers of gasoline and the amount of any tax
36 imposed pursuant to Part 2 (commencing with Section 7301) of
37 this division.

38 (c) “Sales price” does not include any of the following:

- 39 (1) Cash discounts allowed and taken on sales.

1 (2) The amount charged for property returned by customers
2 when that entire amount is refunded either in cash or credit, but
3 this exclusion shall not apply in any instance when the customer,
4 in order to obtain the refund, is required to purchase other property
5 at a price greater than the amount charged for the property that is
6 returned. For the purpose of this section, refund or credit of the
7 entire amount shall be deemed to be given when the purchase price
8 less rehandling and restocking costs are refunded or credited to
9 the customer. The amount withheld for rehandling and restocking
10 costs may be a percentage of the sales price determined by the
11 average cost of rehandling and restocking returned merchandise
12 during the previous accounting cycle.

13 (3) The amount charged for labor or services rendered in
14 installing or applying the property sold.

15 (4) (A) The amount of any tax (not including, however, any
16 manufacturers' or importers' excise tax, except as provided in
17 subparagraph (B)) imposed by the United States upon or with
18 respect to retail sales whether imposed upon the retailer or the
19 consumer.

20 (B) The amount of manufacturers' or importers' excise tax
21 imposed pursuant to Section 4081 or 4091 of the Internal Revenue
22 Code for which the purchaser certifies that he or she is entitled to
23 either a direct refund or credit against his or her income tax for
24 the federal excise tax paid or for which the purchaser issues a
25 certificate pursuant to Section 6245.5.

26 (5) The amount of any tax imposed by any city, county, city
27 and county, or rapid transit district within the State of California
28 upon or with respect to retail sales of tangible personal property,
29 measured by a stated percentage of sales price or gross receipts,
30 whether imposed upon the retailer or the consumer.

31 (6) The amount of any tax imposed by any city, county, city
32 and county, or rapid transit district within the State of California
33 with respect to the storage, use or other consumption in that city,
34 county, city and county, or rapid transit district of tangible personal
35 property measured by a stated percentage of sales price or purchase
36 price, whether the tax is imposed upon the retailer or the consumer.

37 (7) Separately stated charges for transportation from the
38 retailer's place of business or other point from which shipment is
39 made directly to the purchaser, but the exclusion shall not exceed
40 a reasonable charge for transportation by facilities of the retailer

1 or the cost to the retailer of transportation by other than facilities
2 of the retailer. However, if the transportation is by facilities of the
3 retailer, or the property is sold for a delivered price, this exclusion
4 shall be applicable solely with respect to transportation which
5 occurs after the purchase of the property is made.

6 (8) Charges for transporting landfill from an excavation site to
7 a site specified by the purchaser, either if the charge is separately
8 stated and does not exceed a reasonable charge or if the entire
9 consideration consists of payment for transportation.

10 (9) The amount of any motor vehicle, mobilehome, or
11 commercial coach fee or tax imposed by and paid the State of
12 California that has been added to or is measured by a stated
13 percentage of the sales or purchase price of a motor vehicle,
14 mobilehome, or commercial coach.

15 (10) (A) The amount charged for intangible personal property
16 transferred with tangible personal property in any technology
17 transfer agreement, if the technology transfer agreement separately
18 states a reasonable price for the tangible personal property.

19 (B) If the technology transfer agreement does not separately
20 state a price for the tangible personal property, and the tangible
21 personal property or like tangible personal property has been
22 previously sold or leased, or offered for sale or lease, to third
23 parties at a separate price, the price at which the tangible personal
24 property was sold, leased, or offered to third parties shall be used
25 to establish the retail fair market value of the tangible personal
26 property subject to tax. The remaining amount charged under the
27 technology transfer agreement is for the intangible personal
28 property transferred.

29 (C) If the technology transfer agreement does not separately
30 state a price for the tangible personal property, and the tangible
31 personal property or like tangible personal property has not been
32 previously sold or leased, or offered for sale or lease, to third
33 parties at a separate price, the retail fair market value shall be equal
34 to 200 percent of the cost of materials and labor used to produce
35 the tangible personal property subject to tax. The remaining amount
36 charged under the technology transfer agreement is for the
37 intangible personal property transferred.

38 (D) For purposes of this paragraph, “technology transfer
39 agreement” means any agreement under which a person who holds
40 a patent or copyright interest assigns or licenses to another person

1 the right to make and sell a product or to use a process that is
2 subject to the patent or copyright interest.

3 (11) The amount of any tax imposed upon diesel fuel pursuant
4 to Part 31 (commencing with Section 60001).

5 (12) (A) The amount of tax imposed by any Indian tribe within
6 the State of California with respect to a retail sale of tangible
7 personal property measured by a stated percentage of the sales or
8 purchase price, whether the tax is imposed upon the retailer or the
9 consumer.

10 (B) The exclusion authorized by subparagraph (A) shall only
11 apply to those retailers who are in substantial compliance with this
12 part.

13 *(13) The amount of any fee imposed under Chapter 7.5*
14 *(commencing with Section 105435.10) of Part 5 of Division 103*
15 *of the Health and Safety Code.*

16 *SEC. 4. Section 6012 of the Revenue and Taxation Code is*
17 *amended to read:*

18 6012. (a) "Gross receipts" mean the total amount of the sale
19 or lease or rental price, as the case may be, of the retail sales of
20 retailers, valued in money, whether received in money or otherwise,
21 without any deduction on account of any of the following:

22 (1) The cost of the property sold. However, in accordance with
23 any rules and regulations as the board may prescribe, a deduction
24 may be taken if the retailer has purchased property for some other
25 purpose than resale, has reimbursed his or her vendor for tax which
26 the vendor is required to pay to the state or has paid the use tax
27 with respect to the property, and has resold the property prior to
28 making any use of the property other than retention, demonstration,
29 or display while holding it for sale in the regular course of business.
30 If that deduction is taken by the retailer, no refund or credit will
31 be allowed to his or her vendor with respect to the sale of the
32 property.

33 (2) The cost of the materials used, labor or service cost, interest
34 paid, losses, or any other expense.

35 (3) The cost of transportation of the property, except as excluded
36 by other provisions of this section.

37 (4) The amount of any tax imposed by the United States upon
38 producers and importers of gasoline and the amount of any tax
39 imposed pursuant to Part 2 (commencing with Section 7301) of
40 this division.

1 (b) The total amount of the sale or lease or rental price includes
2 all of the following:

3 (1) Any services that are a part of the sale.

4 (2) All receipts, cash, credits and property of any kind.

5 (3) Any amount for which credit is allowed by the seller to the
6 purchaser.

7 (c) “Gross receipts” do not include any of the following:

8 (1) Cash discounts allowed and taken on sales.

9 (2) Sale price of property returned by customers when that entire
10 amount is refunded either in cash or credit, but this exclusion shall
11 not apply in any instance when the customer, in order to obtain
12 the refund, is required to purchase other property at a price greater
13 than the amount charged for the property that is returned. For the
14 purpose of this section, refund or credit of the entire amount shall
15 be deemed to be given when the purchase price less rehandling
16 and restocking costs are refunded or credited to the customer. The
17 amount withheld for rehandling and restocking costs may be a
18 percentage of the sales price determined by the average cost of
19 rehandling and restocking returned merchandise during the
20 previous accounting cycle.

21 (3) The price received for labor or services used in installing or
22 applying the property sold.

23 (4) (A) The amount of any tax (not including, however, any
24 manufacturers’ or importers’ excise tax, except as provided in
25 subparagraph (B)) imposed by the United States upon or with
26 respect to retail sales whether imposed upon the retailer or the
27 consumer.

28 (B) The amount of manufacturers’ or importers’ excise tax
29 imposed pursuant to Section 4081 or 4091 of the Internal Revenue
30 Code for which the purchaser certifies that he or she is entitled to
31 either a direct refund or credit against his or her income tax for
32 the federal excise tax paid or for which the purchaser issues a
33 certificate pursuant to Section 6245.5.

34 (5) The amount of any tax imposed by any city, county, city
35 and county, or rapid transit district within the State of California
36 upon or with respect to retail sales of tangible personal property
37 measured by a stated percentage of sales price or gross receipts
38 whether imposed upon the retailer or the consumer.

39 (6) The amount of any tax imposed by any city, county, city
40 and county, or rapid transit district within the State of California

1 with respect to the storage, use or other consumption in that city,
2 county, city and county, or rapid transit district of tangible personal
3 property measured by a stated percentage of sales price or purchase
4 price, whether the tax is imposed upon the retailer or the consumer.

5 (7) Separately stated charges for transportation from the
6 retailer's place of business or other point from which shipment is
7 made directly to the purchaser, but the exclusion shall not exceed
8 a reasonable charge for transportation by facilities of the retailer
9 or the cost to the retailer of transportation by other than facilities
10 of the retailer. However, if the transportation is by facilities of the
11 retailer, or the property is sold for a delivered price, this exclusion
12 shall be applicable solely with respect to transportation which
13 occurs after the sale of the property is made to the purchaser.

14 (8) Charges for transporting landfill from an excavation site to
15 a site specified by the purchaser, either if the charge is separately
16 stated and does not exceed a reasonable charge or if the entire
17 consideration consists of payment for transportation.

18 (9) The amount of any motor vehicle, mobilehome, or
19 commercial coach fee or tax imposed by and paid to the State of
20 California that has been added to or is measured by a stated
21 percentage of the sales or purchase price of a motor vehicle,
22 mobilehome, or commercial coach.

23 (10) (A) The amount charged for intangible personal property
24 transferred with tangible personal property in any technology
25 transfer agreement, if the technology transfer agreement separately
26 states a reasonable price for the tangible personal property.

27 (B) If the technology transfer agreement does not separately
28 state a price for the tangible personal property, and the tangible
29 personal property or like tangible personal property has been
30 previously sold or leased, or offered for sale or lease, to third
31 parties at a separate price, the price at which the tangible personal
32 property was sold, leased, or offered to third parties shall be used
33 to establish the retail fair market value of the tangible personal
34 property subject to tax. The remaining amount charged under the
35 technology transfer agreement is for the intangible personal
36 property transferred.

37 (C) If the technology transfer agreement does not separately
38 state a price for the tangible personal property, and the tangible
39 personal property or like tangible personal property has not been
40 previously sold or leased, or offered for sale or lease, to third

1 parties at a separate price, the retail fair market value shall be equal
2 to 200 percent of the cost of materials and labor used to produce
3 the tangible personal property subject to tax. The remaining amount
4 charged under the technology transfer agreement is for the
5 intangible personal property transferred.

6 (D) For purposes of this paragraph, “technology transfer
7 agreement” means any agreement under which a person who holds
8 a patent or copyright interest assigns or licenses to another person
9 the right to make and sell a product or to use a process that is
10 subject to the patent or copyright interest.

11 (11) The amount of any tax imposed upon diesel fuel pursuant
12 to Part 31 (commencing with Section 60001).

13 (12) (A) The amount of tax imposed by any Indian tribe within
14 the State of California with respect to a retail sale of tangible
15 personal property measured by a stated percentage of the sales or
16 purchase price, whether the tax is imposed upon the retailer or the
17 consumer.

18 (B) The exclusion authorized by subparagraph (A) shall only
19 apply to those retailers who are in substantial compliance with this
20 part.

21 For purposes of the sales tax, if the retailers establish to the
22 satisfaction of the board that the sales tax has been added to the
23 total amount of the sale price and has not been absorbed by them,
24 the total amount of the sale price shall be deemed to be the amount
25 received exclusive of the tax imposed. Section 1656.1 of the Civil
26 Code shall apply in determining whether or not the retailers have
27 absorbed the sales tax.

28 *(13) The amount of any fee imposed under Chapter 7.5*
29 *(commencing with Section 105435.10) of Part 5 of Division 103*
30 *of the Health and Safety Code.*

31 *SEC. 5. Notwithstanding Section 2230 of the Revenue and*
32 *Taxation Code, no appropriation is made by this act and the state*
33 *shall not reimburse any local agency for any sales and use tax*
34 *revenues lost by it under this act.*

35 ~~SECTION 1. Article 4 (commencing with Section 30133) is~~
36 ~~added to Chapter 2 of Part 13 of Division 2 of the Revenue and~~
37 ~~Taxation Code, to read:~~

Article 4. ~~Tobacco Products Excise Tax~~

~~30133. In addition to the taxes imposed upon the distribution of cigarettes by Article 1 (commencing with Section 30101), Article 2 (commencing with Section 30121), Article 3 (commencing with Section 30131), and any other taxes in this chapter, there shall be imposed an additional excise tax upon every distributor of cigarettes at the rate of nine and one-half cents (\$0.095) for each cigarette that is distributed on and after January 1, 2008.~~

~~30135. (a) Every dealer and wholesaler, for the privilege of holding or storing cigarettes for sale, use, or consumption, shall pay a floor stock tax for each cigarette in his or her possession or under his or her control in this state at 12:01 a.m. on January 1, 2008, at the rate of nine and one-half cents (\$0.095) for each cigarette.~~

~~(b) Every dealer and wholesaler shall file a return with the board on or before February 15, 2008, on a form prescribed by the board, showing the number of cigarettes in his or her possession or under his or her control at 12:01 a.m. on January 1, 2008. The amount of tax shall be computed and shown on the return.~~

~~(c) Every licensed cigarette distributor, for the privilege of distributing cigarettes and for holding or storing cigarettes for sale, use, or consumption, shall pay a cigarette indicia adjustment tax for each California cigarette tax stamp that is affixed to any package of cigarettes and for each unaffixed California cigarette tax stamp in his or her possession or under his or her control at 12:01 a.m. on January 1, 2008, at the following rates:~~

~~(1) Two dollars and thirty-seven and one-half cents (\$2.375) for each stamp bearing the designation "25."~~

~~(2) One dollar and ninety cents (\$1.90) for each stamp bearing the designation "20."~~

~~(3) Ninety-five cents (\$0.95) for each stamp bearing the designation "10."~~

~~(4) Nine and one-half cents (\$0.095) for each stamp bearing the designation "1."~~

~~(d) Every licensed cigarette distributor shall file a return with the board on or before February 15, 2008, on a form prescribed by the board, showing the number of stamps described in~~

1 subdivision (e). The amount of tax shall be computed and shown
2 on the return.

3 (e) ~~The taxes required to be paid by this section are due and~~
4 ~~payable on or before February 15, 2008. Payments shall be made~~
5 ~~by remittances payable to the board and the payments shall~~
6 ~~accompany the forms required to be filed by this section.~~

7 (f) ~~Any amount required to be paid by this section that is not~~
8 ~~timely paid shall bear interest at the rate and by the method~~
9 ~~established pursuant to Section 30202 from February 15, 2008,~~
10 ~~until paid, and shall be subject to determination, and~~
11 ~~redetermination, and any penalties provided with respect to~~
12 ~~determinations and redeterminations.~~

13 30136. ~~Except for payments of refunds made pursuant to Article~~
14 ~~1 (commencing with Section 30361) of Chapter 6, and~~
15 ~~reimbursement of the State Board of Equalization for expenses~~
16 ~~incurred in the administration and collection of the excise taxes~~
17 ~~imposed by this article, all moneys raised pursuant to the taxes~~
18 ~~imposed by this article shall be transmitted by the board to the~~
19 ~~Treasurer for deposit in the General Fund, which shall be used,~~
20 ~~upon appropriation, for children's health related purposes and~~
21 ~~smoking cessation programs, as determined by the Legislature.~~